

1
2
3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: November 16th, 2012**

5
6
7
8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 LLS AMERICA, LLC,

12 Debtor.

No. 09-06194-PCW11

13 _____
14 BRUCE P. KRIEGMAN, solely in
15 his capacity as court-appointed
Chapter 11 Trustee for LLS America,
LLC,

16 Plaintiff,

Adv. No. 11-80138-PCW

17 vs.

18 ARKET CONTRACTORS, LTD.,

19 Defendant.
20 _____

MEMORANDUM DECISION RE:
DEFENDANT ARKET
CONTRACTORS, LTD.'S MOTION
TO DISMISS (ECF NO. 7)

21 This adversary is one of hundreds commenced by the trustee of the LLS America,
22 LLC ("LLS America") bankruptcy estate, which adversaries seek to recover money paid
23 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme
24 conducted by the debtor. Defendant Arket Contractors, Ltd., filed a motion to dismiss
25 on December 17, 2011, ECF No. 7.

26 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written
27 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss
28 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of

MEMORANDUM DECISION RE: . . . - Page 1

1 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal
2 raised in the subject motion are the same as those raised in the Previous Decision. Many
3 of the facts in the Previous Decision are relevant to the subject motion.

4 By affidavit of Duane Swinton (ECF No. 17), the trustee presented evidence in
5 this case that the defendant loaned or invested \$190,000 (CAN) and six (6) promissory
6 notes were issued. In 79 distributions occurring from October 2004 to January 2009, the
7 defendant received \$274,144.66 (CAN). According to the trustee, the defendant filed a
8 proof of claim in the amount of \$190,000 in the underlying LLS America case. By
9 declaration (ECF No. 10), Tirtho Ark, on behalf of the defendant, presented evidence
10 that it was formed under the laws of Canada, does not operate a business in the United
11 States, and all promissory notes listed a Canadian entity as borrower with distributions
12 primarily made from Canadian entities. The declaration further states that the loans or
13 investments were solicited in Canada, but no details were provided regarding the manner
14 of solicitation.

15 The grounds for dismissal in the subject motion are: (1) ineffective service of
16 process; (2) improper extraterritorial application of United States bankruptcy law; and
17 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
18 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
19 forth in the Previous Decision and is applicable to the subject motion.

20 As in the Previous Decision, one basis for the request to dismiss is the lack of
21 personal jurisdiction. As articulated in the Previous Decision, the filing of a proof of
22 claim is a consent to jurisdiction to adjudicate that claim and the related action brought
23 by the trustee of the LLS America estate under 11 U.S.C. § 548. The reasoning regarding
24 the denial of dismissal based upon a consent to personal jurisdiction is set forth in the
25 Previous Decision and is applicable to the subject motion, which is **DENIED**. Counsel
26 for the defendant shall submit an order consistent with this decision.

27
28 ///END OF MEMORANDUM DECISION///

MEMORANDUM DECISION RE: . . . - Page 2